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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2007

CORAM

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE D.MURUGESAN

O.S.A.No.57 of 2007

M.Suresh .. Appellant

-vs-

1. Mrs.B.Sumathi
2. Mrs.Devi .. Respondents

Memorandum of Grounds of Original Side Appeal under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the order dated 15.11.2006 made in O.P.Diary No.12670 of 2006.

For Appellant :: Mr.M.S.Mani

For Respondents :: Mr.R.Thiagarajan

JUDGMENT

The present Original Side Appeal raises an important question as to whether the High Court would have jurisdiction to entertain an Original Petition filed under Sections 300, 370 to 372 of the Indian Succession Act read with Order XXV Rule 6 of the Original Side Rules for issue of succession certificate.

2. Factual matrix leading to the appeal is as follows:-

One P.Mahalingam died intestate on 19.3.2002 at Thiruveedhiamman Koil Street, Peria Koluthuvan Cherry, Paraniputhur & Post, Iyyappanthangal, Chennai. He left the following persons as his Class I legal heirs:

S.No.	Particulars of the Class-I legal heirs		Relationship with the deceased
1	Devi	(2nd respondent)	Widow
2	Mrs.B.Sumathi	(1st respondent)	Daughter
3	M.Suresh	(Appellant)	Son

The deceased was entitled to receive a sum of Rs.87,333/- towards gratuity and group insurance from his employer namely, Sri Ramachandra Medical College and Research Institute, Porur, Chennai and a sum of Rs.83,740/- towards provident fund from the Assistant Provident Fund Commissioner, Tambaram, Chennai. Hence the appellant filed the above unnumbered Original Petition before this Court for the issue of succession

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certificate to collect the above dues from the employer of the deceased and the Assistant Provident Fund Commissioner, Chennai.

3. As the maintainability of the petition was doubted on the ground that as per Section 371 of the Indian Succession Act, 1925 (for short, the "Act"), the District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death or if at that time he had no fixed place of residence and the District Judge within whose jurisdiction any part of the property may be found, may alone grant a certificate, the petition was posted before the Court for consideration as to the maintainability. By order dated 15.11.2006, the learned single Judge found that the unnumbered Original Petition for issue of succession certificate is not maintainable before this Court. Questioning the said order, the present appeal has been filed.

4. We have heard Mr.M.S.Mani, learned counsel appearing for the appellant.

5. For the grant of succession certificate, the Succession Certificate Act 7 of 1889 was enacted. The power to issue succession certificate was vested in the "District Court" under the said Act. The word "District Court" was defined as meaning a Court presided over by a District Judge and as the provisions of that Act referred to only a "District Court", no petitions were made to the High Court for grant of succession certificate.

6. The Succession Certificate Act 7 of 1889 was repealed by the Indian Succession Act 39 of 1925. Initially, as the Act did not define "District Judge", by Amendment Act 18 of 1929, which came into effect from 1.10.1929, Section 2(bb) was introduced and the said section reads as under:-

> "(bb) District Judge" means the Judge of a Principal Civil Court of Original Jurisdiction."

7. Chapter IV of Part IX of the Act deals with the practice in granting and revoking probates and letters of administration. Some of the relevant provisions necessary for the disposal of the appeal are as follows:-

> "264.Jurisdiction of District Judge in granting and revoking probates, etc.--(1) The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.
>
> (2) Except in cases to which section 57 applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay, shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate and letters of administration until the State Government has, by a notification in the Official Gazette, authorised it to do.

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> 266.District Judge's powers as to grant probate and administration--The District Judge shall have the like

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powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding pending in his Court.

300.Concurrent jurisdiction of High Court.--(1) The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

(2) Except in cases to which section 57 applies, no High Court, in exercise of the concurrent jurisdiction hereby conferred over any local area beyond the limits of the towns of Calcutta, Madras and Bombay shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the State Government has, by a notification in the Official Gazette, authorised it so to do."

8. Sub-section (1) of Section 264 speaks of the jurisdiction of the District Judge in granting and revoking probates and letters of administration in respect of all cases within his district, subject to the exception under sub-section (2) of Section 264. The jurisdiction vested in the District Judge can also be delegated by the High Court on a Judicial Officer within a district and on such delegation, the said Judicial Officer shall act as the District delegate. Section 266 relates to the power of the District Judge to grant probate and letters of administration. The High Court also is conferred with the concurrent jurisdiction with the District Judge in exercise of all the powers in terms of Section 300. Hence, by virtue of the provisions of Section 300, the High Court is also conferred with the concurrent jurisdiction in granting and revoking probates and letters of administration.

9. Part X of the Act relates to the issue of succession certificates. The relevant provisions for the disposal of the appeal are as follows:-

"370.Restriction on grant of certificates under this Part.--(1) A succession certificate (hereinafter in this Part referred to as a certificate) shall not be granted under this Part with respect to any debt or security to which a right is required by section 212 or section 213 to be established by letters of administration or probate:

Provided that nothing contained in this section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Indian Christian, or to any part thereof, with respect to any debt or security, by reason that a right thereto can be established by letters of administration under this Act.

(2) ......

371.Court having jurisdiction to grant certificate.--The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District

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Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this Part.

372.Application for certificate--(1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908), for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:--

(a) the time of the death of the deceased;

(b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;

.....

(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.

384.Appeal--(1) Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Judge, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908 (5 of 1908).

(3) Subject to the provisions of sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908 (5 of 1908), as applied by section 141 of that Code, an order of a District Judge under this Part shall be final."

10. Part X of the Act deals with the issue of succession certificates. In terms of Section 371, the jurisdiction for issue of succession certificate is conferred on the District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death or if at that time he had no fixed place of residence, the District Judge within whose jurisdiction any part of the property of the deceased may be found. Sub-section (1)(a)(b) of Section 372 relates to the application for such certificate. An application for issue of succession certificate should set forth the particulars like the time of the death of the deceased, the ordinary residence of the deceased at the time of his death and if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the

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deceased within those limits. Sub-section (3) of Section 372 contemplates that even an application for the certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof. The certificate issued by the District Judge shall have effect throughout India in terms of Section 380 of the Act. A certificate granted by the District Judge may be also revoked by the District Judge in view of the provisions of Section 383 of the Act. In terms of Section 384, an appeal shall lie to the High Court from an order of the District Judge granting or refusing or revoking a certificate. A conspicuous reading of the above provisions would show that the power to grant, refuse or revoke a certificate is vested in the District Court having jurisdiction over the matter. Under Part X, there is no corresponding provision like Section 300 conferring concurrent jurisdiction on the High Court in the grant of succession certificate.

11. The next question, therefore, arises as to whether the High Court has jurisdiction to entertain a petition for issue of succession certificate. In this context, the definition of Section 2(bb) of the Act is referable. As the Succession Certificate Act 7 of 1889 has defined only the District Court for the purpose of conferment of jurisdiction to issue succession certificate, by Amendment Act 18 of 1929, Section 2(bb) was introduced wherein the District Judge was defined as a Judge of the Principal Civil Court of original jurisdiction. The jurisdiction to entertain a petition for succession certificate and the power to issue such certificate came up for consideration before this Court in the matter of G.A.Kuppuswami Nayagar (AIR 1930 Madras 779). In the order of reference, Kumaraswami Sastri, J., after elaborately discussing the various provisions of Part IX and Part X of the Act including Clauses 11 to 21 and Clause 34 of the Letters Patent including the definition of "District Judge" held that "there is no reason why the High Court cannot grant succession certificates in cases where it could be granted outside Madras". The learned Judge also held that in terms of Clause 34 of the Letters Patent, which gives jurisdiction in testamentary and intestate matters, the High Court is also vested with concurrent jurisdiction for grant of succession certificate. The above reference was answered by a Division Bench as follows:-

> "Judgment.--Having regard to the amendment of the Act, we consider that this petition is now maintainable in this Court and order the case to be posted before the learned Judge in Chambers."

12. In the decision in In the goods of Bholanath Pal, Deceased. Sm.Satyabala Dasi v. Sm.Sudharanee Dasi (AIR 1931 Calcutta 580), a learned Judge of the Calcutta High Court, while dealing with the power of the High Court to grant succession certificate, has observed as follows:-

> "The Succession Act of 1925 contained no definition of the words "District Judge" and accordingly the definition in the General Clauses Act applied. Under the proviso to that definition a Judge of a High Court is excluded from it. This caused some difficulty as the Act of 1925, according to that definition, did not give a Judge of a High Court jurisdiction to grant probate or letters of administration.

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It is argued that in order to meet this difficulty the Act of 1929 was passed. That Act defined the words "District Judge" as they had been defined in the General Clauses Act, but omitted the proviso.

It is contended that it cannot have been the intention of the legislature by that amending Act, or, at all, to give a High Court power to grant a succession certificate.

It is not suggested that the definition does not include a Judge of a High Court; for as regards certain sections of the Succession Act of 1925, it was obviously intended that the words "District Judge" should include a Judge of a High Court. The Court is invited to hold that although the term "District Judge" includes a Judge of the High Court when it is used in all other sections of the Succession Act, it excludes a Judge of the High Court when it is used in the sections relating to succession certificates. There is nothing in these sections to indicate that the definition in the amending Act was not intended to apply to them.

The words used are plain and unambiguous and read in their ordinary meaning give a High Court jurisdiction to grant succession certificates.

.....

In my opinion the Succession Act of 1925 read with the amending Act of 1929 gives a High Court power to grant succession certificates. The order of the learned Judge will stand. The Secretary of State must pay the costs, on the footing that he appeared in a contested application for the issue of a succession certificate."

13. The definition of "District Judge" as introduced under Section 2 of the Amendment Act 18 of 1929 to the Act came up for consideration in the matter of the Indian Succession Act, 1925 and the Estate of L.A.R.Aroonachellam Chettyar (AIR 1931 Rangoon 281(1). Cunliffe, J., has observed as follows:-

"This is an application for the grant of a succession certificate put forward by one Letchmanan Chettyar, with reference to the estate of the late Aroonachellam Chettyar.

I am informed that this Court formerly refused to issue succession certificates under the Succession Act of 1925, although that Act gave power to District Judges to issue these certificates. The Act of 1925 has been the subject of an amendment by the statute passed in 1929, and S.2, Amending Act, defines a "District Judge" as "the Judge of the principal civil Court of original jurisdiction." The question is whether by reason of this amendment power is now given to High Courts on the original side to issue these certificates.

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I have never understood why this right should be given to District Courts and not given to High Courts,

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and until I am corrected by the Court of appeal, I propose to construe this amendment as rectifying what seems to me to be an unintelligible omission on the part of the legislature. The administration of probate and succession as far as the jurisdiction of this Court is concerned, will be greatly facilitated if that view is taken, and it seems to me that such a construction of the amendment is both good law and good sense.

I therefore grant this petition and issue to the petitioner a succession certificate in the form prayed."

14. The scope of Section 2(bb) of the Act came up for consideration before the Bombay High Court in the decision in Manubhai Chunnilal v. The General Accident Fire and Life Assurance Corporation Limited, (1936) 38 Bombay Law Reporter 632, wherein it has been held that the term "District Judge" includes a Judge of the High Court within the Presidency Towns.

15. Again the very same question came up for consideration before a learned single Judge of the Calcutta High Court in the decision in Maniklal Shah v. Hiralal Shaw, AIR (37) 1950 Calcutta 377. In paragraphs 10 & 12, it is observed as follows:-

"10. There is a further answer to Mr.Ghosh's contention. The definition of "District Judge" given in S.2(bb) of the amending Act 18 of 1929 includes a Judge of the High Court on the Original Side (see Manubhai v. General Accident, Fire and Life Assurance Corporation Ltd., 38 Bom.L.R.632 at p.655; (AIR (23) 1936 Bom.363. The result is that a High Court Judge on the original side has concurrent jurisdiction with the District Judge in all testamentary matters. In the case of In the Goods of Mohendra Narain Roy, 5 C.W.N.377. Sale, J., held that the "High Court" in S.87, Probate and Administration Act (V (5) of 1881) was not merely confined to the Appellate Jurisdiction of that Court, but included its Original Jurisdiction and that under section the High Court exercising its Original Jurisdiction had concurrent jurisdiction with the District Judge.

12. Under cl.34, Letters Patent (1865), the High Court's jurisdiction in testamentary matters is co-extensive with the limits of the Province. This jurisdiction cannot be said to interfere with those provisions of the Indian Succession Act which confer jurisdiction on District Judges to grant probate. The exercise by the High Court of its testamentary jurisdiction beyond the local limits of its ordinary original civil jurisdiction is not exclusive of, but concurrent with, the jurisdiction of the District Judge. I hold therefore that this Court has jurisdiction to entertain and try this suit."

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16. Letters Patent of the High Court at Madras was made on 28th December, 1865 for establishing the High Courts of Judicature in India.

By that Letters Patent, the High Court of Judicature for the Presidency of Madras was also established. The High Court of Judicature so established was vested with the powers to exercise all Civil, Criminal, Admiralty, Vice-Admiralty, Testamentary, Intestate and Matrimonial Jurisdiction (original & appellate) and all such powers and authority for and in relation to the administration of justice in the said Presidency.

17. Clauses 11 to 18 relate to the ordinary civil jurisdiction of the High Court. Clause 11 deals with the local limits of the ordinary original jurisdiction of the High Court, which reads as under:-

> "11. Local limits of the ordinary original jurisdiction of the High Court--And We do hereby ordain that the said High Court of Judicature at Madras shall have and exercise ordinary original civil jurisdiction within such local limits as may from time to time be declared and prescribed by any law made by the Governor-in-Council, and, until some local limits shall be so declared and prescribed within the limits of the local jurisdiction of the said High Court of Madras at the date of the publication of these presents, and the ordinary original civil jurisdiction of the said High Court shall not extend beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction."

Clause 12 relates to the original jurisdiction as to suits, which reads as under:-

> "12. Original jurisdiction as to suits--And We do further ordain that the said High Court of Judicature at Madras, in exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description if, in the case of suits for land or other immovable property, such land or property shall be situated, or, in all other cases, if the cause of action shall have arisen, either wholly, or, in case the leave of the court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court or if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain, within such limits, except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause at Madras, in which the debt or damage, or value of the property sued for does not exceed hundred rupees."

Clause 13 relates to the extraordinary original civil jurisdiction, which reads as under:-

> "13. Extraordinary original civil jurisdiction--And We do further ordain that the said High Court of Judicature at Madras shall have power to remove, and to try and determine, as a Court of Extraordinary Original Jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the Presidency of Madras, subject to its superintendence when the said High Court shall think proper to do so, either on the agreement of the parties to

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that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court."

Clause 14 deals with joinder of several causes of action. Clauses 15 and 16 confer appellate jurisdiction on the High Court. Clause 17 confers authority with respect to the persons and estate of infants, idiots and lunatics and Clause 18 ordains the Court for the relief of Insolvent Debtors shall be held before one of the Judges of the High Court and that the High Court and any such Judge shall have such powers and authorities as are constituted by the laws relating to insolvent debtors in India.

18. Clauses 19 to 21 declare the law to be administered by the High Court in the exercise of its ordinary original civil jurisdiction, extraordinary original civil jurisdiction and in appellate jurisdiction. Clauses 19 and 20 read as under:-

> "19.By the High Court in the exercise of Ordinary Original Civil Jurisdiction--And We do further ordain that, with respect to the law or equity to be applied to each case coming before the said High Court of Judicature at Madras, in the exercise of its Ordinary Original Civil Jurisdiction, such law or equity shall be the law or equity which would have been applied by the said High Court to such case if these Letters Patent had not issued.
>
> 20.In the exercise of extraordinary original civil jurisdiction--And We do further ordain that with resect to the law and equity and rule of good conscience to be applied to each case coming before the said High Court of Judicature at Madras, in the exercise of its Extraordinary original civil jurisdiction such law or equity and rule of good conscience shall be law or equity and rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein."

19. Clause 34 relates to the Testamentary and Intestate jurisdiction of the High Court, which reads as under:-

> "34.Testamentary and intestate jurisdiction--And We do further ordain that the said High Court of Judicature at Madras shall have the like power and authority as that which may now be lawfully exercised by the said High Court, in relation to the granting of probates of last Wills and testaments, and letters of administration of the goods, chattels, credits, and all other effects whatsoever of persons dying intestate, whether within or without the Presidency of Madras; Provided always, that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration."

20. While Clauses 11 to 18 of the Letters Patent deal with the civil jurisdiction of the High Court, particularly, ordinary original jurisdiction of the High Court, Clause 19 deals with the ordinary original civil jurisdiction and Clause 20 deals with the extraordinary original civil jurisdiction, whereas, Clause 34 deals with the testamentary and

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intestate jurisdiction of the High Court namely, original jurisdiction of the Court. All petitions to the High Court in its original jurisdiction are either civil or criminal. When the petitions are filed for the first time in the High Court, they are original civil and when the petitions are filed in the form of appeals, they are appellate civil. As Clause 34 of the Letters Patent confers original testamentary and intestate jurisdiction on the High Court, a petition for succession certificate could be entertained under Clause 34 by the High Court in its original jurisdiction. In this context, it is referable that the Letters Patent was prior in point of time as it was made in the year 1865 for establishment of the High Court with conferment of powers and the Indian Succession Act was enacted only in the year 1925.

21. The above discussion on the issue leads us to the only conclusion that though there is no specific provision of concurrent jurisdiction for the High Court to grant a succession certificate under Part X, when such provision of concurrent jurisdiction is conferred by Section 300 for grant of probate and letters of administration, in view of the definition of Section 2(bb) defining the term "District Judge" which includes the High Court insofar as it entertains a petition and grant, revise or revoke the succession certificate and by virtue of Clause 34 of the Letters Patent which gives the High Court jurisdiction in testamentary and intestate matters, we hold that this Court should have concurrent jurisdiction vested with the District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death or if at that time he had no fixed place of residence, the District Judge within whose jurisdiction any part of the property of the deceased may be found and the present original petition for the grant of succession certificate is maintainable. In view of our discussion, the order of the learned single Judge is liable to be set aside. Accordingly, the impugned order is set aside and the original side appeal is allowed. Registry is directed to number the Original Petition Diary No.12670 of 2006 and post the same before the learned single Judge dealing with the subject. No costs. Consequently, M.P.No.1 of 2007 is closed.

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1.The Sub Assistant Registrar (O.S.)
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+ One cc to Mr. M.s. Mani, Advocte sR 60382
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